



OFFICE OF
INSURANCE COMMISSIONER

In the Matter of)	
)	
NATIONAL FOUNDATION)	Order No. D06-245
OF AMERICA,)	
)	ORDER TO CEASE
An Unauthorized Entity and)	AND DESIST
)	
RICHARD K. OLIVE and SUSAN L. OLIVE,)	
)	
Individual Respondents)	

Pursuant to RCW 48.02.080 and RCW 48.15.023, the Insurance Commissioner (OIC) orders the entity and the individuals named above and their officers, directors, trustees, agents, employees, and affiliates ("Respondents") to immediately cease and desist from:

- A. Engaging in or transacting the unauthorized business of insurance in the State of Washington, including the issuance of tax-deductible annuities, "installment plans," (term certain annuities) and charitable remainder trusts;
- B. Advertising purportedly charitable contracts, annuities and insurance-related products;
- C. Seeking, soliciting, pursuing, and/or obtaining any insurance business in the State of Washington, including purportedly charitable contracts;
- D. Participating, directly or indirectly, in any act of an insurance agent or insurance company in seeking, soliciting, pursuing, and/or obtaining any unauthorized trust, annuity or other insurance business in the State of Washington;
- E. Soliciting Washington residents by e-mail, facsimile (fax), telephone, mail or any other means to induce them to purchase any form of insurance product; and from
- F. Offering to Washington residents a plan, contract, trust, annuity or policy or coverage for any other form of insurance without submitting to examination by the Insurance Commissioner to determine the organization and solvency of the person or the entity offering such insurance, and to determine whether or not such person or entity complies with all applicable provisions of the Insurance Code.

THIS ORDER IS BASED ON THE FOLLOWING:

1. National Foundation of America ("NFOA") is a Tennessee corporation headquartered in Franklin, Tennessee that sells purportedly charitable annuities, charitable "installment plans," (term certain annuities) testamentary plans, family legacy accounts and charitable remainder trusts. RCW 48.15.20 provides that an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves an insurance contract.

2. RCW 48.05.030 provides that no person shall act as an insurer and no insurer shall transact insurance in this state other than as authorized by a certificate of authority issued to it by the commissioner. An insurance transaction includes a "solicitation" as provided by RCW 48.01.060. Life insurance as defined in RCW 48.11.020 includes annuities and endowment benefits.

3. RCW 48.38.010 provides that the commissioner may grant a certificate of exemption to any insurer or educational, religious, charitable or scientific institution conducting a charitable gift annuity business that, among other requirements, possesses a current tax-exempt status under the laws of the United States.

4. Richard K. Olive and Susan L. Olive are officers of NFOA.

5. NFOA and Respondents have issued insurance and transacted the business of insurance in the State of Washington affecting subjects located wholly or in part in Washington and to be performed in Washington, including issuing purportedly tax-deductible "charitable installment purchases" (term certain annuities) to elderly Washington residents since January, 2006.

6. Respondents have not been granted a certificate of authority to act as an insurer in Washington, nor are any of Respondents licensed as insurance agents or brokers in this state. Respondents have not submitted to OIC any appropriate certificate, license, or other document issued by another agency of this state, any subdivision thereof, or the federal government permitting or qualifying Respondents to provide such coverage in this state. Respondents also have not registered with the OIC as risk retention or risk purchasing agents, nor have they transacted insurance through a licensed surplus lines broker in this state. Respondents have not been granted an exemption under Section 501(c)(3) of the Internal Revenue Code. Respondents have not received a certificate of exemption permitting them to issue charitable gift annuities in Washington.

7. Between January 2006 and September 2006, Respondents solicited numerous licensed insurance agents to sell its tax-deductible annuities.

8. Between February 17, 2006 and March 1, 2006, Respondents sold "Installment Purchase Plans" (term certain annuities) to three elderly Washington residents, misrepresenting the terms of the contracts. The consumers were led to believe that they would be making approximately 6% return on investment and that they would enjoy a substantial charitable tax deduction.

9. Respondents misrepresented to both the prospective agents and the purchasers that the products they were selling were being legally offered in Washington by a charitable organization granted an exemption under Section 501(c)(3) of the Internal Revenue Code and that their "installment plans" were described in Section 453 of the Internal Revenue Code. These representations were false, deceptive, and misleading. Respondents knew that they had not been granted an exemption as a charitable organization by the IRS, that the plans and annuities offered were not exempt from state insurance regulation, and that Respondents had not applied for nor been granted a certificate of exemption under RCW 48.38.010. Respondents also knew or should have known that section 453 of the Internal Revenue Code concerns only the "installment method" of accounting for income tax purposes.

10. Respondents' above-described conduct violates RCW 48.15.020, Solicitation by an unauthorized insurer prohibited – Personal liability, and RCW 48.30.040, False information and advertising.

IT IS FURTHER ORDERED that Respondents, within forty-five (45) days of receipt of this Order, furnish the OIC with a complete listing, to include contact information, of all Washington residents and businesses who have purchased any insurance or insurance-related product, including "charitable installment purchase" plans (term certain annuities) and tax-deductible annuities, from Respondents, and that Respondents report to the OIC all assets received by Respondents in exchange for issuing such products.

IT IS FURTHER ORDERED that Respondents replace all insurance products issued by them in this state with a policy issued by an authorized insurer pursuant to RCW 48.15.020. Respondents shall fulfill the terms of contracts formed prior to the effective date of this Order pursuant to RCW 48.15.020(2)(b) until such contracts are so replaced.

Any violation of the terms of this Order by Respondents, their officers, directors, agents or affiliates, will render the violator(s) subject to the full penalties authorized by RCW 48.02.080, RCW 48.15.023, and other applicable Code sections.

Respondents have the right to demand a hearing pursuant to chapters 48.04 and 34.05 RCW. This Order shall remain in effect subject to the further order of the commissioner.

THIS ORDER IS EFFECTIVE IMMEDIATELY and is entered at Tumwater, Washington, this 18th day of September 2006.

DECLARATION OF MAILING

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below I mailed or caused delivery of a true copy of this document to Richard K. Owe
DATED this 18 day of September 2006.
at Olympia, Washington.

Signed: Jocile Thompson

MIKE KREIDLER
Insurance Commissioner

By: Marcia G. Stickler
Marcia G. Stickler
Legal Affairs Division
Office of Insurance Commissioner